

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

SCHERBA INDUSTRIES, INC. )  
The Scherba Building )  
2880 Interstate Parkway )  
Brunswick, Ohio 44212, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GOOGLE, INC. )  
1600 Amphitheatre Parkway )  
Mountain View, CA 94043, )  
)  
Defendant. )

CASE NO.:  
  
JUDGE  
  
**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**  
  
**(Jury Demand Endorsed Hereon)**

Now comes Scherba Industries, Inc. (“Scherba”), by and through its counsel, and for its Complaint states as follows:

## **JURISDICTION AND VENUE**

1. This copyright infringement action arises under 17 U.S.C. §101 et seq. This Court has jurisdiction over this action under 28 U.S.C. §1331 (federal question), and 28 U.S.C. §1338 (acts of Congress related to copyright).

2. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

## PARTIES

3. Plaintiff Scherba is a business incorporated in Ohio, and in good standing, with its primary place of business in Ohio. Scherba does business as Inflatable Images.

4. Defendant Google, Inc. (“Google”) is a Delaware corporation with its principal place of business located in Mountain View, CA. Google owns and operates the largest Internet

search engine in the United States. Its search engine is available free of charge to Internet users, and is supported in large part by commercial entities' purchase of advertising space on the site.

5. *Google AdWords* is Google's flagship advertising product and a main source of revenue. *AdWords* offers pay-per-click (PPC) advertising, and site-targeted advertising for text, banner, and rich-media ads. The *AdWords* program includes local, national, and international distribution.

### **NATURE OF THE ACTION**

6. Scherba, under its trademarked name Inflatable Images, is a full resource manufacturer and promotion fulfillment provider for inflatables of all types, shapes and sizes, and has an established and well-founded reputation for the quality of its services and customer satisfaction.

7. Inflatable Images offers a complete line of product support services designed to aid and assist its clients with highly visible inflatable based promotions and displays that complement a total advertising campaign.

8. One of Plaintiff's most successful inflatable advertising products is the *Gorilla Inflatable*. See image attached hereto as **"Exhibit A"**.

9. Plaintiff's *Gorilla Inflatable* is the subject of a Copyright Registration for a 3-dimensional sculpture and registered with the United States Copyright Office with a registration number of VAu 500-884, dated November 6, 2000. See attached Copyright Registration as **Exhibit "B"**.

10. The *Gorilla Inflatable* is sold by Scherba to businesses for use as a successful advertising platform.

11. Plaintiff is the exclusive owner of the copyright for the *Gorilla Inflatable*. The Plaintiff has not authorized Google to reproduce the copyrighted image of its *Gorilla Inflatable*, or to display and/or distribute such image through its *Google AdWords* print advertisements, or anywhere else.

12. Upon information and belief, Google advertises its own *Google AdWords* program through publication in various business oriented magazines throughout the country, targeting businesses with the intent to attract advertising revenue.

13. Google provides internet search services free to the public, and derives the majority of its revenues directly from the sale of advertising.

14. Upon information and belief, and without permission from Plaintiff, Google copied the copyrighted image of the Plaintiff's *Gorilla Inflatable*, and reproduced this image in numerous magazines in an advertisement for its *Google AdWords* product, with distribution throughout the country, and for the purpose of generating profit for Google. See Advertisement in *Entrepreneur* magazine with distribution including Ohio, attached hereto as **Exhibit "C"**. See also, Advertisement insert in *Crain's Cleveland Business*, attached hereto as **Exhibit "D"**.

15. Google's acts have caused, and will continue to cause damages and irreparable injury to Plaintiff through:

- a. continued copyright infringement of the Plaintiff's *Gorilla Inflatable* image and/or the effectuation of new and further infringements;
- b. lost profits and/or opportunities; and
- c. damage to Plaintiff's reputation.

16. Google acted willfully or knew or should have known that its actions constitute infringement.

17. Plaintiff has suffered damages and is in danger of suffering further damages from Google's unlawful practice.

**COUNT I**  
**(COPYRIGHT INFRINGEMENT)**

18. Plaintiff realleges and incorporates by reference as if fully set forth herein the allegations contained in all preceding paragraphs.

19. Plaintiff owns a valid copyright for the *Inflatable Gorilla*, and the image of which has been copied by Google, and reproduced for publication in print advertisements.

20. Plaintiff has the exclusive right to reproduce the *Inflatable Gorilla* image, and with the exclusive right to authorize such reproduction and distribution of its image.

21. Google copied and reproduced for its own commercial use the image of Plaintiff's copyrighted image.

22. Google's conduct is in violation of the copyright owned by Plaintiff Scherba Industries, Inc.

23. Google's infringement of Plaintiff's copyright was willful.

24. As a result of Google's act of copyright infringement and the foregoing allegations, Plaintiff has suffered damages in excess of \$25,000, which will be demonstrated at trial.

**COUNT II**  
**(INJUNCTIVE RELIEF)**

25. Plaintiff realleges and incorporates by reference as if fully set forth herein the allegations contained in all preceding paragraphs.

26. Google has already reproduced and distributed images of Plaintiff's copyrighted *Gorilla Inflatable* image for use in print advertisements for *Google AdWords*, which have appeared in various trade and business magazines.

27. Google's commercial use of Plaintiff's copyright constitutes copyright infringement.

28. Unless enjoined from doing so, Google's commercial use of Plaintiff's copyrighted image will cause Plaintiff irreparable harm by depriving it of both the right to control the reproduction, licensing, and/or distribution from its copyright and to receive revenue therefrom.

29. Plaintiff is likely to succeed on the merits of its copyright infringement claim, because Google's use of the copyright does not fall within any of the statutory exceptions to copyright infringement and is in violation of copyright.

30. The balance of hardship favors Plaintiff, because Google's earnings will not be severely damaged by its inability to utilize Plaintiff's copyright for advertisement purposes.

31. Plaintiff is therefore entitled to an injunction barring Google from continued infringement of the Plaintiff's copyright, and other equitable relief as more fully set forth in the Prayer for Relief.

**COUNT III**  
**(DECLARATORY RELIEF)**

32. Plaintiff realleges and incorporates by reference as if fully set forth herein the allegations contained in all preceding paragraphs.

33. An actual controversy exists between Plaintiff and Google by reason of Google's present and continuing infringement of the Plaintiff's copyright as alleged herein.

34. Plaintiff is entitled to a judgment declaring that Google's actions are unlawful and, specifically, that Google infringed and may continue to infringe the Plaintiff's copyright in violation of the Copyright Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and that judgment be entered against Defendant as follows:

- A. For declaratory relief stating that Defendant's unauthorized conduct violates Plaintiff's rights under common law and the Federal Copyright Act;
- B. For an injunction barring Google, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing any of Plaintiff's copyrighted material without consent, or otherwise infringing Plaintiff's copyrights or other rights in any manner;
- C. For permanent injunctive and declaratory relief barring Google from continued infringement of the copyright of Plaintiff and/or other equitable relief;
- C. For an Order ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by its infringement of Plaintiff's copyright or such damages as are proper;
- D. For an Order awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial; and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- E. For an Order awarding Plaintiff its costs, attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. §505; and

- F. For an Order awarding Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

McINTYRE KAHN & KRUSE CO. L.P.A.

OF COUNSEL:

McIntyre, Kahn & Kruse Co. L.P.A.

s/ Glenn R. Wilson

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**DEMAND FOR JURY TRIAL**

Plaintiff, as provided by Rule 38 of the Federal Rules of Civil Procedure, requests trial by jury in the above-captioned matter.

Respectfully submitted,

McINTYRE KAHN & KRUSE CO. L.P.A.

OF COUNSEL:

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s/ Glenn R. Wilson

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